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Viewing cable 10KUALALUMPUR92, COURT DECISION ON STATE POWER PLAY ENDS LEGAL BATTLE, BUT SETS WORRISOME PRECEDENT

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Reference ID	Created	Released	Classification	Origin
10KUALALUMPUR92	2010-02-12 03:53	2011-08-30 01:44	CONFIDENTIAL	Embassy Kuala Lumpur

Appears in these articles:

<http://www.malaysia-today.net/mtcolumns/40922-wikileaks-perak-episode-sets-a-dangerous-precedent>

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C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 000092

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SUBJECT: COURT DECISION ON STATE POWER PLAY ENDS LEGAL BATTLE, BUT SETS WORRISOME PRECEDENT

REF: A. 09 KL 342 -- PANDEMONIUM IN PERAK STATE ASSEMBLY

[1](#)B. 09 KL 78 -- NAJIB LEADS TAKEOVER IN PERAK

[1](#)C. KL 20 -- WHAT IS GOING ON IN MALAYSIA?

Classified By: Political Counselor Brian D. McFeeters for reasons 1.4 b and d.

Summary and Comment

¶1. (SBU) Malaysia's Federal Court, the highest level in Malaysia's judicial system, announced on February 9 that the Sultan of Perak had the legal authority to appoint a new Chief Minister in his state, as he did in February 2009, after concluding that the ruling National Front (BN) coalition commanded the majority of seats in the Perak state assembly. The case effectively ends the Perak constitutional crisis, which has been simmering since three opposition politicians declared themselves independents friendly toward BN, tipping the balance of seats in the state assembly toward BN (refs A and B). The Sultan came under unprecedented scrutiny because replacing a Chief Minister is not specifically mentioned in the state constitution. The opposition coalition People's Alliance (PR) announced that they would no longer contest the issue as they had vigorously done for the past year, and instead work alongside the BN for the benefit of the people of Perak, if certain conditions were met. A recent independent poll confirmed that most Perakians believe that the only way to fairly resolve this crisis would be to hold snap elections in the state, which the BN has announced they will not do prematurely.

¶2. (C) Comment: This Federal Court decision in the BN's favor raises renewed questions about the independence of the Malaysian judiciary, already in question in connection with the Anwar Ibrahim trial and other cases (ref C). While the GOM argues that the decision is based on a sound interpretation of the Perak constitution, opposition figures disagree and argue the decision legitimizes political maneuvering to change the results of democratic elections, setting a dangerous precedent by implying that the King could remove the Prime Minister, without a no-confidence motion in Parliament. A well-financed political coalition could persuade members of Parliament to support the other side, shifting power through undemocratic means, as many allege occurred in Perak. Before this Federal Court decision, the assembly would have instead been dissolved for fresh elections, but now the sultan can legitimize the takeover without voter input. End Summary and Comment.

The February 9 Decision

¶3. (U) The Federal Court ruled on February 9 in a unanimous 5-0 vote that the Sultan of Perak, Azlan Shah, had the authority to appoint a new Chief Minister if he believed that a different political coalition commanded the allegiance of a majority of seats in the state assembly. In announcing its decision, the Federal Court confirmed that the Sultan was correct in his February 6, 2009 decision to verify that veteran politician Zambray Abdul Kadir, a member of UMNO (the United Malays National Organization -- the dominant political party in the BN) had the support of a majority of the members of the state assembly, replacing Mohd Nizar Jamaluddin. The switch in support came after three members of the People's Alliance simultaneously declared themselves to be independents friendly to the BN in early February 2009, a maneuver that is widely believed to have been driven by the BN. Zambray's attorney Cecil Abraham went to great lengths to stress that "this decision is binding on the state government and the federal government."

Predictions and Reactions

¶4. (C) Poloff and Pol Specialist visited Perak from February 1-3 (to be reported septel) and discussed the (then upcoming) February 9 Federal Court decision with politicians and attorneys familiar with the case. Nizar's lead lawyer Chan Kok Keong told Poloff ahead of the February 9 decision that he was certain the judges would rule in favor of Zambray. He opined that it would not be a "constitutional decision" but rather "a political decision." Chan pointed out that when he and his legal team were making their submission at the Federal Court, all five judges "were extremely hostile" to them. Chan added that by ruling in Zambray's favor, the Federal Court "will be rewriting its own decisions and the

constitution." Former Chief Minister Nizar told Poloff that a ruling in favor of Zambry would result in "the Prime Minister or the Chief Minister holding office at the pleasure of the King or the Sultan." Nizar added that this would set a "dangerous precedent." DAP Vice President and Member of Parliament from Perak Kulasegaran also told Poloff ahead of the decision that the courts would favor Zambry because "the political stakes are too high for Prime Minister Najib." Poloff also spoke with Zambry's political secretary Abdul Rahman and the assembly speaker S. Ganeson; both expressed confidence that the court "will make the right decision" by ruling in favor of Zambry.

15. (U) After the February 9 decision, BN Chief Minister Zambry was quoted in the media on saying he was thankful for the court's decision, adding that "hopefully all parties can accept this decision and this political crisis in Perak can finally be put to rest." Prime Minister Najib appealed for everyone to respect the court's decision, commenting "We have to accept the decision of the country's highest court. The issue and saga of who is the right Chief Minister of Perak has been decided, and I hope they (the opposition People's Alliance) accept this decision." National opposition leader Anwar Ibrahim slammed the decision, claiming UMNO "does not have the courage to face the people" in elections. Democratic Action Party leader Lim Kit Siang called the verdict "legalization of BN's coup d'etat." Former de facto law minister Zaid Ibrahim called the decision "warped legal reasoning" done for "political expediency."

Nizar: Will Work with UMNO in Perak, but with Conditions

16. (SBU) Former Chief Minister Nizar convened a special meeting of state PR leaders on the day of the Federal Court's ruling, announcing that the opposition would give its full cooperation to the BN government in Perak. He said, "for the good of Perakians, we have decided to become a strong opposition in the state assembly and lend our services to the Barisan National government in implementing policies that are good for the people." Nizar, however, caveated that the opposition would only give its full cooperation if Zambry's government agreed to four conditions. First, they must allow opposition parties to use public premises for the purpose of hosting functions; second, they must give memberships to opposition assemblymen to special committees; third, they must provide all opposition assemblymen with allocations of RM 150,000--RM 200,000 (approximately \$40,000 to \$55,000 USD) per year; and fourth, the BN must base its administration "on the principles of honesty, integrity, transparency, justice, and welfare." Chief Minister Zambry responded on February 10 by stating "we have never discriminated against them on the allocations, so no need for conditions. We must help the public. That's the yardstick." (Note: The BN traditionally only grants "development funds" to constituencies held by BN representatives. Just prior to the takeover last year, former Minister in the PM's department Ahmad Zahid Hamidi--who is now the Minister of Defense--announced that each BN assemblyman would receive RM 300,000, while the other constituencies would receive nothing. End Note.)

Poll: Decide Through an Election, not a Court Decision

17. (U) The independent Merdeka Center announced results of a poll taken of Perak voters on February 5, in conjunction with the one year anniversary of the BN's takeover of the state. Among the key findings of the poll: 74% of the respondents feel that fresh state elections are the best way to resolve the political crisis in Perak; 65% of respondents believe the Perak political crisis remains a relevant issue after one year; and 60% place a higher priority on having a democratically elected government than on improving the economy.

Looking Ahead

18. (SBU) Although it appears that both sides want to move ahead, there are still two pending legal cases that could, theoretically, result in a shift in power. The first case

involves a lawsuit by former state assembly Speaker Sivakumar, who was not initially removed from his position until after the first state assembly session under Zambry was conducted. As speaker, Sivakumar held the power to suspend people for contempt; during the first meeting in April 2009, he suspended Zambry and six others for assuming their new positions before the initial court decision (Nizar v. Zambry) was complete. Although it is unlikely the courts will find in favor of Sivakumar, if they do it is possible that his authority to suspend Zambry and six others will stand, thereby giving Nizar the majority of seats again. The second case concerns the alleged resignations of the three state assemblymen who defected from the PR. Just prior to the defections, Nizar claimed that the three had resigned from the state assembly, and held undated letters of resignation from each as proof. The Election Commission, however, did not accept these letters as legitimate and refused to call for elections to replace the three. The PR filed a lawsuit for the letters to be recognized as legitimate, currently under judicial review at the Federal Court. All legal decisions on this lawsuit thus far have rejected the PR's assertions.

KEITH